No. 12156

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JOSEPH RUFUS LANGFORD,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S REPLY BRIEF.

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TOPICAL INDEX

TABLE OF AUTHORITIES CITED

Cases

Statutes

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APPELLEE'S REPLY BRIEF.

Jurisdictional Statement.

(a) The United States District Court for the Southern District of California had jurisdiction of the appellant and the subject matter under Title 18, United States Code, Section 398 (1946 Ed.), making it unlawful for any person to knowingly transport any woman or girl in foreign commerce for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice.

(b) The appellant was charged in Count One of the Indictment with knowingly transporting and causing to be transported one Evelyn Della Mazur, also known as Carol Jones, from Los Angeles County, California, within the

Central Division of the Southern District of California, to Tiajuana, Baja California, Mexico, for the purposes of prostitution, debauchery, and other immoral practices, and with intent and purpose on the part of the appellant to induce, entice, and compel said Evelyn Della Mazur to become a prostitute and give herself up to debauchery and to engage in other immoral practices, on or about April 5, 1948.

The appellant was charged in Count Two of the Indictment with knowingly transporting and causing to be transported said Evelyn Della Mazur, also known as Carol Jones, from Tiajuana, Baja California, Mexico, to Los Angeles County, California, in the Central Division of the Southern District of California, for the same purposes as alleged in Count One above, on or about April 6, 1948.

(c) This Court has jurisdiction of the appeal under the provisions of Section 225 (a) and (d) of Title 28, United States Code.

(d) A motion was made by counsel for defendant for a judgment of acquittal as to both counts at the close of the Government's case [Clk. Tr. 9].

(e) A verdict of not guilty as charged in Count One, and guilty as charged in Count Two of the Indictment, was returned by the jury on January 4, 1949, after a trial of the case [Clk. Tr. 12].

(f) It was adjudged that the defendant be committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five years, following the verdict of the jury [Clk. Tr. 14].

Statement of the Case.

The statement of facts set forth in Appellant's Opening Brief, commencing on page 2 thereof, is not acceptable to appellee for the reason that the statement is incomplete and hence selective, is interpretative, and does not conform to the testimony as a whole. The following summary of the evidence is submitted as a more objective synopsis.

The appellant and defendant, Joseph Rufus Langford, is an adult, Negro male. In the latter part of January, 1948, he resided at 938 East 21st Street, in Los Angeles, California [Rep. Tr. 33].

At Brother's Rendezvous, on lower Central Avenue, Los Angeles, California, the appellant first met Evelyn Della Mazur, Caucasian, also known as Carol Jones, and hereinafter referred to as Jones. This meeting occurred in the early morning hours of some day late in January of 1948 [Rep. Tr. 30, 56, 61, 62, 63].

Jones, who was twenty years old at the time of trial, first came to California early in January, 1948. She was at that time married to a former Army officer, this marriage being dissolved by a divorce decree of February, 1948, in the State of Illinois. She testified that prior to coming to California, and while living at the home of her mother in Rockford, Illinois, she had engaged in illicit sexual relations with one Tommy Risby, Negro, over a period of about three months; that she was graduated from Bradley University, Peoria, Illinois, in June, 1947, taking a degree in sociology and applied psychology; that she had never engaged in prostitution prior to her meeting with the appellant [Rep. Tr. 56, 57, 58, 59, 60, 68, 69].

At the time of the first meeting of the appellant with Jones, the appellant invited her to go home with him. She complied, going to bed with him and engaging in sexual

intercourse [Rep. Tr. 31, 32, 69]. From that day early in January, 1948, until sometime in May, 1948, Jones resided with the appellant continuously except for three intervals of a week or less when she lived apart from the appellant [Rep. Tr. 70, 71, 72, 73, 74, 75, 76].

A few days after Jones moved in with the appellant, he appeared at their 21st Street address with four sailors and asked her to engage in acts of sexual intercourse with them for money. After at first refusing, she engaged in sexual intercourse with three of them, receiving either $10.00 or $20.00 from each, which sums she gave to the appellant. At the time of this event, there was present a woman named Ann, a girl who was at that time engaged in acts of prostitution for the defendant [Rep. Tr. 33, 34, 35, 36, 37, 111, 112, 113].

Jones continued to work for the appellant as a prostitute from the date of the above described incident with the sailors until sometime in May, 1948, with the exception of the three intervals when she left the appellant and was living apart from him [Rep. Tr. 38].

The appellant started her out as a prostitute, making her first connections for her and occasionally bringing in a customer. As Jones' circle of regular customers grew, the appellant's task of securing clients was eased [Rep. Tr. 93, 94, 95, 96, 97, 98, 104]. Jones was required to turn all of her earnings as a prostitute over to the defendant during the time she lived with him [Rep. Tr. 37, 38, 100, 101, 102, 104, 105].

In March, 1948, Jones left the appellant, and moved to a motel on the Sunset Strip in Hollywood, California. She did not engage in prostitution during this interval. Three days later the appellant came upon her while she was seated in the car of another, took her from the car

and brought her back to the 21st Street address [Rep. Tr. 72, 73]. Jones testified that at that time she loved the appellant, but that the appellant forced her to return against her will.

Early in April, 1948, Jones again left the appellant, moving to an address on 50th Street in Los Angeles. She left him because of beatings she had received from the appellant. She was away from the appellant for three or four days before he appeared at the 50th Street address and requested that she return to him. On this occasion he cried a little and told Jones he desired to marry her. The testimony is not clear whether at that time he also promised her she would not have to work any more if she returned [Rep. Tr. 39, 40, 76].

Jones had suggested marriage to the appellant on several prior occasions, but was reluctant to be a wife and prostitute for appellant at the same time. Jones thereupon agreed to return [Rep. Tr. 77].

On April 5, 1948, the day following the appellant's proposal of marriage to Jones, the appellant moved her back to the 21st Street address; and on the same day, the appellant, Jones, and a friend named Melvin Bryant, went to Tiajuana, Mexico, the appellant driving his Packard automobile. The appellant and Jones made this journey for the purpose of getting married. They arrived in Tiajuana too late to get married so they went to a local night club called the Copacabana where they had dinner shortly after midnight. Jones testified that a sailor contacted the appellant outside the night club and as a result, she engaged in sexual intercourse with the sailor in the back seat of the defendant's car on the outskirts of Tiajuana, the sailor paying the appellant a sum of money for the act. She testified that the appellant was present at

the time, driving the car, that Bryant remained in the night club, and that this transaction took about twenty minutes [Rep. Tr. 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89].

Mr. Bryant, a singer and entertainer, who lived with the appellant from about March, 1948, to the time Jones finally left the appellant in early May, 1948, stated that during the course of the evening at the Copacabana he did not recall the appellant and Jones being absent from the night club at any time [Rep. Tr. 117]; and also stated that he was not away from the appellant and Jones more than five minutes when they were in the night club [Rep. Tr. 125, 126].

Early in the morning of April 6, 1948, at about 5:30 a. m., the appellant, Jones and Melvin Bryant returned to the United States, spending the night at the Douglas Hotel in San Diego. On April 6, 1948, the party returned to Tiajuana, where the appellant and Jones signed certain documents for the purpose of entering into a marriage. After the signing of these documents, the party returned to the appellant's 21st Street address in Los Angeles, arriving about 5:00 or 6:00 p. m. on April 6, 1948. On arriving at appellant's home, Jones found a girl living at appellant's address. Jones testified that she moved the other girl out [Rep. Tr. 44, 45, 46, 47, 48, 49].

On the evening of the return from Tiajuana, the appellant and Jones and Bryant went to Brother's Rendezvous on lower Central Avenue in Los Angeles. Jones was at that time requested by appellant to immediately go back to work as a prostitute. Jones refused. The following day, April 7, 1948, Jones went back to work as a prostitute and continued to work as a prostitute for the appellant until about April 17, 1948 [Rep. Tr. 48, 50]. At this

time she again left the appellant, testifying at the trial that her reason for again leaving him was, "Because I was tired of it all" and went on to state that one "gets tired of working all day and all night, there is no appreciation, nothing is ever bought for you, they gripe about it when you want a new pair of hose" [Rep. Tr. 101].

When Jones left the appellant on or about April 17, 1948, she went to live with a friend, one Jimmy Monday, a doorman at Brother's Rendevzous. She was at Monday's about one week when the appellant moved in with her [Rep. Tr. 70, 71].

Sometime late in May or early in June, 1948, Jones ceased to work as a prostitute for the appellant and left him [Rep. Tr. 32, 38].

Jones also testified [Rep. Tr. 46] that she had to falsify her age at the time she and the appellant signed the nuptial application, or went through the marriage ceremony in Tiajuana, Mexico. The effect of this falsification on the application, or marriage, whichever it was, under Mexican law, is not known; however, it is clear that if Jones' testimony is correct, both she and appellant were cognizant of her falsification.

Questions Involved.

I. Whether or not there was any evidence from which the jury could properly find that the dominant purpose of the appellant in transporting Jones from Los Angeles County, California, to Tiajuana, Baja California, Mexico, and from Tiajuana, Baja California, Mexico, to Los Angeles County, California, was for an immoral purpose in violation of the Mann Act, viewing the journey to Mexico and return as an entity.

A. Where the appellant has, by his conduct, demonstrated that his subjective purpose in proposing

marriage and in marrying Jones, was to regain her affection and cause her to return to him and resume the career of prostitute for his benefit; and where, in order to carry out this subject purpose and plan, the appellant transports Jones in foreign commerce, is not such transportation in furtherance of such plan, a transportation of Jones for an immoral purpose, in violation of the Mann Act?

B. Where evidence is offered showing that appellant's dominant purpose in transporting Jones from Tiajuana, Mexico, to Los Angeles County, California, was to return her to her activities as a prostitute, is a finding by the jury that appellant is guilty under the Mann Act for such transportation a verdict against the law?

II. Whether or not there was any evidence from which the jury could rightly find that the dominant purpose of the appellant in transporting Jones from Tiajuana, Baja California, Mexico, to Los Angeles County, California, was for an immoral purpose, in violation of the Mann Act.

A. Where the appellant has, by his conduct, demonstrated that his dominant purpose, also his immediate purpose, in transporting Jones from Tiajuana, Baja California, Mexico, to Los Angeles County, California, was to return her to her familiar field of operation, where he could immediately put her back to work earning him money by her prostitution, is not such transportation a transportation of Jones for an immoral purpose in violation of the Mann Act?

B. If the appellant, under these circumstances, returns himself because Los Angeles County is his home, is not this motive nevertheless immaterial?

C. If Jones' reason for returning with the appellant is because she regards the appellant as her husband, and because she regards Los Angeles County as her home, are not these reasons nevertheless immaterial?

III. Whether or not it be error for Government counsel, in his closing argument to the jury, to comment on the failure of the appellant to testify in his own defense, when the Court fails to instruct the jury to disregard counsel's comment.

A. When defense counsel fails until the filing of his Appellant's Brief to cite or notice such comment as error?

B. When evidence against appellant is so conclusive as to negative the possibility of prejudice?

IV. Whether or not evidence of acts of prostitution performed by a woman other than Jones for the benefit of the appellant, and at the home of appellant, at a time when Jones was living with appellant and was embarking on a career as prostitute for the benefit of appellant, and performed about fifty days prior to the events of the Indictment, is relevant and material.

Whether or not it was error for the Court to fail to include in its instructions to the jury a specific instruction that such evidence was admitted only for the purpose of showing appellant's intent, when counsel for appellant never requested the instruction during trial.

A. Is such evidence admissible to show intent of appellant?

ARGUMENT.

It is submitted that the record amply sustains the verdict of the jury, and that there was sufficient evidence from which the jury could conclude that the appellant transported Jones in foreign commerce for a purpose forbidden by the Mann Act.

I.

The Verdict Is Not Against the Law.

A. An examination of the Government's argument to the jury [Rep. Tr. 154 to 161] reveals that the Government advanced two theories, on either of which the jury might properly have found the appellant guilty under Count Two of the Indictment. One theory was that the appellant married Jones not so much for the normal reasons that a man marries a woman, as for the purpose of causing her to return to him and continue to work for him as a prostitute. The other theory advanced in the argument was that the dominant purpose of the appellant in bringing Jones back to Los Angeles from Tiajuana, Mexico, was to get her back to work immediately earning money for the appellant as a prostitute.

Transportation of a woman to a foreign country for the purpose of entering into a marriage which was undertaken by the man with the design of thus enticing the woman back into prostitution, is clearly within the scope of the statute, which ". . . aims to penalize only those who use interstate commerce with a view toward accomplishing the unlawful purposes. To constitute a violation of the Act, it is essential that the interstate transportation have for its object or be the means of effecting or facilitating the proscribed activities." (*Mortensen v. United States,* 322 U. S. 369, 374.) It is the contention of the

Government that the transportation of Jones to Mexico was the means adopted by the appellant, together with the marriage, for bringing Jones back into prostitution.

The transportation of a woman in foreign commerce for the purpose of returning her to prostitution is, of course, clearly within the area of the proscribed activities. Thus, a finding by the jury that Jones was transported by the appellant from Mexico to Los Angeles for the purpose of returning her to her activities as a prostitute, would require the jury to find the appellant guilty as charged in Count Two.

B. It appears that appellant argues that the intent, motive, or purpose necessary for the establishment of a crime may not rest in inference (App. Br. 9, 10, 11).

United States v. Reginelli (3rd Cir.), 133 F. 2d 595.

At page 595 the Court said:

> "It should be noted that it was only the defendant's purpose in bringing about the woman's transportation that needed to be inferred. As already appears, the facts as to the interstate transportation and the immoral practices were directly proven by the oral testimony of witnesses.
>
> "That the intent, motive, or purpose necessary for the establishment of a crime may rest in inference, hardly requires citation of authority."

And again, page 598:

> "True enough, the interstate transportation which the Mann Act makes penal is only such as is undertaken or initiated for the purpose of effecting, aiding or facilitating prostitution, debauchery, or other im-

> moral practices. Fisher v. United States, 4th Cir., 266 Fed. 667, 670. But the purpose for which the interstate transportation is enlisted may be inferred from the conduct of the parties within a reasonable time before and after the transportation. See Neff v. United States, 8 Cir., 105 F. (2d) 688, 691. In Grayson v. United States, 8 Cir., 107 F. (2d) 367, 370,—a prosecution under the Mann Act,—the Court of Appeals had no doubt that 'inferences as to intent may be gathered from subsequent acts and conduct.' "

It is clear from the above citation that purpose and motive of the appellant in the instant case may rest in inference alone. If it is an inference which must itself be based upon another inference the rule is otherwise, but the evidence here does not present that possibility. (See *United States v. Fleenor,* 162 F. 2d 935, at p. 942.)

Nor is it necessary to prove purpose or intent by direct evidence. Indeed, it is seldom that motive or intent can be proved by any other than circumstantial evidence.

> *Tedesco v. United States* (9th Cir.), 118 F. 2d 737.

At page 741 the Court said:

> "Furthermore, the purpose or intent in prosecution for transporting a woman in interstate commerce for immoral purpose may be proved by circumstantial evidence (Alpin v. United States, 9 Cir., 41 F. (2d) 495, 496), in which class stands the Bates testimony. And in reaching their conclusion the jury were entitled to consider what Miss Bates did after arriving at her destination. Kelly v. United States, 9 Cir., 297 F. 212, 213."

> *United States v. Mitchell,* 138 F. 2d 831.

C. The appellant appears to rely heavily upon the testimony of Jones and Bryant as to their personal motives and purposes in taking the journey to Mexico (App. Br. 18, 20). The purpose of the victim Jones and the passenger Bryant in making the journey fails to shed any light on appellant's purpose or motive in bringing Jones back from Mexico. Their testimony is immaterial.

Mallory v. United States (9th Cir.), 126 F. 2d 192;

Alpin v. United States (9th Cir.), 41 F. 2d 495, 502.

D. The appellant argues that since the case of *Mortensen v. United States,* cited above, is practically identical, there should be a reversal. In only one material aspect are the two cases similar: In each case we find defendants who probably departed from their homes with the intention of returning within a relatively short period of time (App. Br. 7, 8).

E. Appellant contends that the verdict of "Not Guilty" on Count One of the Indictment compels a similar verdict on Count Two. This contention of appellant fails to contemplate the vagaries of a jury. It is not a correct statement of the law.

Dunn v. United States, 284 U. S. 390.

At page 393 the Court said:

> "Consistency in the verdict is not necessary. Each count in an indictment is regarded as if it were a separate indictment. Latham v. Regina, 5 Best & S., 635, 642, 643, 122 Eng. Reprint, 968; Selvester v. United States, 170 U. S. 262, 42 L. ed. 1029, 18 S. Ct. 580. If separate indictments had been presented against the defendant for possession and for maintain-

ing a nuisance, and had been separately tried, the same evidence being offered in support of each, an acquittal on one could not be pleaded as *res adjudicata* of the other. Where the offenses are separately charged in the counts of a single indictment the same rule must hold. As was said in Steckler v. United States (C. C. A., 2d), 7 F. (2d) 59, 60:

" 'The most that can be said in such cases is that the verdict shows that either in the acquittal or the conviction the jury did not speak their real conclusions, but that does not show that they were not convinced of the defendant's guilt. We interpret the acquittal as no more than their assumption of a power which they had no right to exercise, but to which they were disposed through lenity.'

"Compare Horning v. District of Columbia, 245 U. S. 135, 65 L. ed. 185, 41 S. Ct. 53.

"That the verdict may have been the result of compromise, or of a mistake on the part of the jury, is possible. But verdicts cannot be upset by speculation or inquiry into such matters."

So here, the verdict of the jury may be a compromise or may be the result of error, but it nevertheless cannot be upset by appellant's claim of inconsistency.

F. The appellant urges the Court to take note of the fact that but for the presence of an effective miscegenation statute in California at the time of the trip to Mexico, the appellant and Jones would have been married in California (App. Br. 12). If the purpose of the appellant in taking these steps to marry Jones was to entice her back to prostitution, as the jury apparently found, his act of marrying her would be for a wrongful purpose no matter where performed. This argument is not responsive to the true issue.

There Is Sufficient Evidence to Support the Verdict.

Under the Government's theory that the appellant used the act of marriage as a means of causing Jones to return to prostitution for appellant's benefit, the Government respectfully directs the attention of the Court to the following evidence:

1. That Jones first left appellant in March, 1948, and that appellant forced her to return to him; and that at that time she loved him but also feared him [Rep. Tr. 71-73, 103].

2. That Jones next left the appellant late in March or early in April, 1948, because of physical mistreatment. At that time she had suggested marriage to him several times. That appellant came to her and asked her to come back to him, and asked her to marry him [Rep. Tr. 39, 40, 75, 76]. That at the time of appellant's proposal and during the wedding trip another woman was residing at his house [Rep. Tr. 48, 49].

3. That on the evening of the day of their return from the wedding trip, the appellant urged Jones to return to prostitution [Rep. Tr. 49].

4. That Jones left the appellant again about ten days after the return from Mexico because she was required to work too hard as a prostitute and because of lack of appreciation on the part of appellant and because she was allowed nothing for herself [Rep. Tr. 101].

5. That the appellant was a procurer at times for women other than Jones [Rep. Tr. 34, 35, 36, 48].

6. That Jones was required to turn over all earnings to appellant [Rep. Tr. 37, 38, 100, 101, 102, 104, 105].

7. That Jones was at times detained in the dwelling of the appellant by appellant's implied threat of force against her if she left [Rep. Tr. 54, 55].

The Government contends that from this evidence the jury was permitted to find that the appellant was not the kind of person who could entertain a true appreciation of the significance of marriage, and that his proposal of marriage to Jones and his undertaking of the marriage was merely a device used to cause her to return to him. The appellant knew that Jones desired to marry him, so he made use of that knowledge to entice her back to him. The jury was permitted to find, after a consideration of all the evidence of the appellant's conduct toward Jones, that he cared little for her, and was interested in her primarily as a source of considerable income to himself, and that he exploited her obvious infatuation for him.

Under the Government's theory that the appellant returned Jones to Los Angeles from Mexico for the dominant purpose of putting her immediately back to work as a prostitute for his benefit, the Government respectfully submits the entire testimony elicited at the trial from Jones and Bryant, with particular emphasis on that testimony which reveals that even on his wedding trip the appellant put Jones to work, because he felt the need of more funds [Rep. Tr. 43, 44, 83-86]. And that on the evening of her wedding day the appellant urged Jones to go back to work.

As the appellant contends in his brief, each member of this wedding party may have been returning to Los Angeles because it was their place of residence; however, the only material consideration is the purpose of the appellant in bringing Jones back to Los Angeles. The evidence re-

veals that by the 5th of April, 1948, Jones had been working for the appellant for about two months and was firmly established with a lucrative clientele in a neighborhood well known to the appellant. From this evidence the jury was permitted to find that the dominant purpose of the appellant in returning Jones to Los Angeles was to get her back immediately in her familiar territory among her established patrons in order that she might return to work and replenish appellant's diminishing funds.

The two theories advanced by the Government are not repugnant each to the other; rather, they complement each other. If appellant's purpose in marrying Jones was mercenary, his reason for bringing her back to Los Angeles must have been for the purpose suggested by the Government. The jury might well find that both purposes existed in the mind of the appellant.

Remarks of Government Counsel to the Jury Were Not Prejudicial to the Appellant.

In view of the exceptionally strong evidence against the appellant in this case, remarks by the Government counsel on the failure of appellant to take the witness stand could not have been prejudicial to appellant, since the verdict of the jury would have been the same on this evidence, had the remarks not been made. Assuming that the remarks might have operated to the prejudice of the appellant, at the time they were made, the possibility of prejudice was cured by the instruction given the jury by the Court appearing at line 21 ff., Reporter's Transcript, page 172. Appellant did not raise this objection at time of trial.

The Court Did Not Commit Error in Admitting Into Evidence Certain Testimony Offered by the Government.

The appellant contends that certain testimony of Jones, offered by the Government, was irrelevant and immaterial, and that its admission over appellant's objection was error (App. Br. 31-33). The witness Jones had testified that a certain "Ann" was working for the appellant as a prostitute at the time Jones was initiated into the profession by the appellant. The appellant did not object to this testimony, but did object when the Government asked Jones if she had ever seen Ann give the appellant money. The objection was overruled by the Court, which stated at the time that the question if answered would be proper evidence to prove intent or purpose of the appellant [Rep. Tr. 35, 36].

It is well settled that evidence that a defendant has committed other acts similar to those with which he is charged, is competent evidence to prove intent if the other acts were committed within a reasonable time before or after the act charged. Admissibility of such evidence is a matter within the discretion of the Court.

United States v. Reginelli, 133 F. 2d 595, 598;
Ellis v. United States, 138 F. 2d 612, 614;
United States v. Krulewitch, 145 F. 2d 76, 80;
Neff v. United States, 105 F. 2d 688.

Any objection of the appellant to the failure of the Court to instruct the jury as to the purpose for which the attacked evidence was admitted, is untimely. The appellant submitted no instruction on the topic to the Court,

nor did the appellant request such an instruction at the trial. His objection first appears in his brief. An examination of the transcript [Rep. Tr. 36] reveals that the jury was told the purpose for which the testimony was admitted at the time it was admitted. It is difficult to see how the appellant could be prejudiced by the answer of Jones at this juncture, since she had just previously testified over no objection from the appellant that Ann was working as a prostitute for the appellant.

Conclusion.

The evidence upon which the jury found appellant guilty plainly furnishes adequate support for that verdict. The trial Court committed no reversible error in its rulings, or in its instructions to the jury. Appellant has had a full and fair trial. There is no reason for setting aside the verdict and the lower Court's judgment. The judgment should be affirmed.

Respectfully submitted,

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